

**REMARKS**

The Office Action mailed January 16, 2003, has been carefully considered. The present amendment is intended to be a complete response thereto and to place the case in condition for allowance. A Request for a three month extension of time and fee therefor is filed herewith.

Claims 1-26 are pending.

**THE CLAIMS ARE NOT OBVIOUS**

Claims 1-2, 4, 6, 11-15, 22-23, and 26 stand rejected under 35 U.S.C. 103(a) as being obvious over Glushko (U.S Patent No. 6,039,898) in view of Oba et al. (U.S Patent No. 4,767,693), Usami (U.S. Patent No. 5,075,147), or Bell (U.S. Patent No. 4,547,444). Applicant respectfully traverses the rejection.

According to 35 U.S.C. § 103(c), effective November 29, 1999,

[s]ubject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Glushko qualifies as prior art only under 35 U.S.C. § 102(e), because the present claims have priority to U.S. Provisional Patent Application Serial No. 60/064,388 filed November 7, 1997. Further, Glushko and the present invention were subjected to an obligation of assignment to the same person. Particularly, the presently claimed invention and Glushko, at the time of the invention, were assigned to OMD Devices LLC, Wilmington, DE (see the attached front pages of Glushko and of WO 99/24527), which were subsequently transferred to TriDStore IP, LLC, New York, NY. In accordance with 35 U.S.C. 103(c), Glushko is not to be considered when determining whether the claimed invention is obvious under 35 U.S.C. § 103(a), because Glushko and the presently claimed invention were commonly owned at the time the invention was made. *See MPEP 2146.* Therefore, because

Glushko cannot render the present invention obvious, the rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn.

## **ALLOWABLE SUBJECT MATTER**

Applicant gratefully acknowledges the Examiner indicating claims 3, 5, 7-10, 16-21, and 24-25 as being allowable if rewritten in independent form.

## **CONCLUSION**

Applicant has responded to the Office action mailed September 30, 2003. All pending claims are now believed to be allowable and favorable action is respectfully requested.

In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (109289-00138). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely.

Any fees due are authorized above.

Respectfully submitted,

ALPEROVICH et al.



Date: March 25, 2004

By:

\_\_\_\_\_  
David Edmondson  
Registration No. 35,126